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10/805,102	03/19/2004	Jeffrey Allan Green	42P12962C	8505

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EXAMINER	
PHU, PHUONG M	
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2611	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

TH

Office Action Summary	Application No.	Applicant(s)	
	10/805,102	GREEN ET AL.	
	Examiner	Art Unit	
	Phuong Phu	2611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 July 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *19-44* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *19-44* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *19 March 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *3/19/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 19-21 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 10 of U.S. Patent No. 6,724,814 in view of claim 1 of U.S. Patent No. 6,724,814.

-Regarding claim 19, claim 10 of U.S. Patent No. 6,724,814 teaches the claimed method except claim 10 fails to teach procedure of identifying a CODEC for the communication system based on the minimum absolute error value, as claimed.

However, claim 10 teach procedure of obtaining the minimum absolute error value (see col. 13, lines 56-57; and procedure of identifying a CODEC for the communication system (see col. 13, line 60).

In a similar endeavor, claim 1 of U.S. Patent No. 6,724,814 teaches procedure of identifying a CODEC for a communication system based on a minimum absolute error value (see col. 12, lines 30-31).

Since claim 10 does not teach in detail how the CODEC for the communication system is identified, it would have been obvious for one skilled in the art to implement the invention of claim 10 in such a way that the CODEC for the communication system would be identified based on the obtained minimum absolute error value, as taught by claim 1, so that such the implementation would become another embodiment derived from the teachings of claims 10 and 1.

-Regarding claim 20, claim 10 in view of claim 1 teaches that the communication system comprises a first modem connected to a second modem through a digital communications network (see col. 13, lines 34-37).

-Regarding claim 21, claim 10 in view of claim 1 teaches that the communication system has a repetition frame size of one or more slots (see col. 13, lines 34-46).

3. Claim 22 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 11 of U.S. Patent No. 6,724,814 in view of claim 1 of U.S. Patent No. 6,724,814.

-Regarding claim 22, claim 11 of U.S. Patent No. 6,724,814 teaches the claimed method except claim 11 fails to teach procedure of identifying a CODEC for the communication system based on the minimum absolute error value, as claimed.

However, claim 10, which claim 11 depends on, teach procedure of obtaining the minimum absolute error value (see col. 13, lines 56-57; and procedure of identifying a CODEC for the communication system (see col. 13, line 60).

In a similar endeavor, claim 1 of U.S. Patent No. 6,724,814 teaches procedure of identifying a CODEC for a communication system based on a minimum absolute error value (see col. 12, lines 30-31).

Since claim 11 does not teach in detail how the CODEC for the communication system is identified, it would have been obvious for one skilled in the art to implement the invention of claim 11 in such a way that the CODEC for the communication system would be identified based on the obtained minimum absolute error value, as taught by claim 1, so that such the implementation would become another embodiment derived from the teachings of claims 11 and 1.

4. Claim 23 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 11 of U.S. Patent No. 6,724,814 in view of claim 1 of U.S. Patent No. 6,724,814, and further in view of claim 17 of U.S. Patent No. 6,724,814.

-Regarding claim 23, as applied to claim 22, claim 11 of U.S. Patent No. 6,724,814 in view of claim 1 of U.S. Patent No. 6,724,814 teaches the claimed invention except they fails to teach that a first test PAD fraction is selected to have a value of 1.0, and is decremented to a value of 0.25 for repeated calculations of summing absolute errors, as claimed.

However, claim 11 in view of claim 1 teaches procedure of obtaining a calculation of summing absolute errors (see col. 13, lines 52-53)

In a similar endeavor, claim 17 of U.S. Patent No. 6,724,814 teaches that a first test PAD fraction is selected to have a value of 1.0, and is decremented to a value of 0.25 for repeated calculations of summing absolute errors.

Since claim 11 in view of claim 1 does not teach in detail how calculation of summing absolute errors is obtained, it would have been obvious for one skilled in the art to implement invention of claim 11 in view of claim 1 in such a way that the calculation of summing absolute errors is obtained by selecting a first test PAD fraction is selected to have a value of 1.0 for a first calculation of summing absolute errors, and incrementing the test PAD fraction to a value of 0.25 for repeated calculations of summing absolute errors, as taught by claim 17, so that such the implementation would become another embodiment derived from the teachings of claims 11, 1 and 17.

5. Claim 24 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 10 of U.S. Patent No. 6,724,814 in view of claim 1 of U.S. Patent No. 6,724,814, and further in view of claim 12 of U.S. Patent No. 6,724,814.

-Regarding claim 24, claim 10 of U.S. Patent No. 6,724,814 in view of claim 1 of U.S. Patent No. 6,724,814 teaches the claimed invention except they fails to teach procedure of storing a plurality of PAD values corresponding to different time slots in a repetition frame, and grouping the PAD values into bins of similar values and using the average of the PAD values in the most populated bin to form the PAD estimate, as claimed.

However, claim 10 in view of claim 1 teaches procedure of obtaining the PAD estimate (see col. 13, line 58)

In a similar endeavor, claim 12 of U.S. Patent No. 6,724,814 teaches procedure of storing a plurality of PAD values corresponding to different time slots in a repetition frame, and grouping the PAD values into bins of similar values and using the average of the PAD values in the most populated bin to form the PAD estimate.

Since claim 10 in view of claim 1 does not teach in detail how the PAD estimate is obtained, it would have been obvious for one skilled in the art to implement invention of claim 10 in view of claim 1 procedure of storing a plurality of PAD values corresponding to different time slots in a repetition frame, and grouping the PAD values into bins of similar values and using the average of the PAD values in the most populated bin to form the PAD estimates, as taught by claim 12, so that such the implementation would become another embodiment derived from the teachings of claims 10, 1 and 12.

6. Claim 25 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 13 of U.S. Patent No. 6,724,814 in view of claim 1 of U.S. Patent No. 6,724,814.

-Regarding claim 25, claim 13 of U.S. Patent No. 6,724,814 teaches the claimed method except claim 13 fails to teach procedure of identifying a CODEC for the communication system based on the minimum absolute error value, as claimed.

However, claim 10, which claim 13 depends on, teach procedure of obtaining the minimum absolute error value (see col. 13, lines 56-57; and procedure of identifying a CODEC for the communication system (see col. 13, line 60).

In a similar endeavor, claim 1 of U.S. Patent No. 6,724,814 teaches procedure of identifying a CODEC for a communication system based on a minimum absolute error value (see col. 12, lines 30-31).

Since claim 13 does not teach in detail how the CODEC for the communication system is identified, it would have been obvious for one skilled in the art to implement the invention of claim 13 in such a way that the CODEC for the communication system would be identified based on the obtained minimum absolute error value, as taught by claim 1, so that such the implementation would become another embodiment derived from the teachings of claims 13 and 1.

7. Claims 26 and 27 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 14 of U.S. Patent No. 6,724,814 in view of claim 1 of U.S. Patent No. 6,724,814.

-Regarding claim 26, as applied to claim 13 in view of claim 1, claim 14 in view of claim 1 teach the claimed invention, and claim 14 further teaches that the CODEC type comprises mu-law encoding.

-Regarding claim 27, as applied to claim 13 in view of claim 1, claim 14 in view of claim 1 teach the claimed invention, and claim 14 further teaches that the CODEC type comprises A-law encoding.

8. Claims 28 and 29 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 13 of U.S. Patent No. 6,724,814 in view of claims 1 and 15 of U.S. Patent No. 6,724,814.

-Regarding claim 28, as applied to claim 25, claim 13 in view of claim 1 teaches the claimed invention, except they fail to teach the CODEC is a D4 channel bank CODEC.

Claim 15 of U.S. Patent No. 6,724,814 teaches that the CODEC is a D4 channel bank CODEC.

For an application, it would have been obvious for one skilled in the art to implement invention of claim 13 in view of claim 1 in such a way that the CODEC is a D4 channel bank CODEC, as taught by claim 15, so that such the implementation would become another embodiment derived from the teachings of claims 13, 1 and 15.

-Regarding claim 29, as applied to claim 25, claim 13 in view of claim 1 teaches the claimed invention, except they fail to teach procedure of detecting the CODEC by finding an error maximum at the PAD estimate in a robbed bit signaling (RBS) time slot, as claimed.

Claim 15 of U.S. Patent No. 6,724,814 teaches that procedure of detecting the CODEC by finding an error maximum at the PAD estimate in a robbed bit signaling (RBS) time slot.

For an application, it would have been obvious for one skilled in the art to further implement invention of claim 13 in view of claim 1 with procedure of detecting the CODEC by finding an error maximum at the PAD estimate in a robbed bit signaling (RBS) time slot, as taught by claim 15, so that such the implementation would become another embodiment derived from the teachings of claims 13, 1 and 15.

9. Claim 30 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 18 of U.S. Patent No. 6,724,814 in view of claim 1 of U.S. Patent No. 6,724,814.

-Regarding claim 30, claim 18 of U.S. Patent No. 6,724,814 teaches the claimed method except claim 11 fails to teach procedure of identifying a CODEC for the communication system based on the minimum absolute error value, as claimed.

However, claim 10, which claim 18 depends on, teach procedure of obtaining the minimum absolute error value (see col. 13, lines 56-57; and procedure of identifying a CODEC for the communication system (see col. 13, line 60).

In a similar endeavor, claim 1 of U.S. Patent No. 6,724,814 teaches procedure of identifying a CODEC for a communication system based on a minimum absolute error value (see col. 12, lines 30-31).

Since claim 18 does not teach in detail how the CODEC for the communication system is identified, it would have been obvious for one skilled in the art to implement the invention of claim 11 in such a way that the CODEC for the communication system would be identified based on the obtained minimum absolute error value, as taught by claim 1, so that such the implementation would become another embodiment derived from the teachings of claims 18 and 1.

10. Claim 31 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 18 of U.S. Patent No. 6,724,814 in view of claim 1 of U.S. Patent No. 6,724,814, and further in view of claim 19 of U.S. Patent No. 6,724,814.

-Regarding claim 31, claim 18 in view of claim 1 teaches the claimed invention except they fail to teach procedure of adjusting the value of TestFrac to produce a minimum error.

Claim 19 teaches procedure of adjusting the value of TestFrac to produce a minimum error.

For an application, it would have been obvious for one skilled in the art to further implement invention of claim 18 in view of claim 1 with procedure of adjusting the value of TestFrac to produce a minimum error, as taught by claim 19, so that such the implementation would become another embodiment derived from the teachings of claims 18, 1 and 19.

11. Claim 32 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 18 of U.S. Patent No. 6,724,814 in view of claim 1 of U.S. Patent No. 6,724,814, and further in view of claim 20 of U.S. Patent No. 6,724,814.

-Regarding claim 32, as applied to claim 31, claim 18 in view of claim 1 and 20 teaches the claimed invention and further teaches the value of TestFrac is between 1.0 and 0.25 (see claim 20).

12. Claims 33-37, 40, 41, 42, 43, 44 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5, 7, 19, 20, 8, 8, respectively, of U.S. Patent No. 6,724,814. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-5 encompass limitations of claim 33-37, respectively.

13. Claim 38 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 4 of U.S. Patent No. 6,724,814, in view of claim 6 of U.S. Patent No. 6,724,814.

-Regarding claim 38, claim 4 teaches the claimed invention except claim 4 fails to teach that the CODEC is a D4 channel bank CODEC, as claimed.

In a similar endeavor, claim 6 teaches that the CODEC is a D4 channel bank CODEC.

For an application, it would have been obvious for one skilled in the art to implement invention of claim 4 in such a way that the CODEC is a D4 channel bank CODEC, as taught by

claim 6, so that such the implementation would become another embodiment derived from the teachings of claims 4 and 6.

14. Claim 39 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 4 of U.S. Patent No. 6,724,814, in view of claim 6 of U.S. Patent No. 6,724,814.

-Regarding claim 39, claim 4 teaches the claimed invention except claim 4 fails to teach that first modem is to detect a CODEC by finding an error maximum at the PAD estimate in a robbed bit signaling (RBS) time slot, as claimed.

In a similar endeavor, claim 6 teaches that first modem is to detect a CODEC by finding an error maximum at the PAD estimate in a robbed bit signaling (RBS) time slot.

For an application, it would have been obvious for one skilled in the art to implement invention of claim 4 in such a way first modem is to detect a CODEC by finding an error maximum at the PAD estimate in a robbed bit signaling (RBS) time slot, as taught by claim 6, so that such the implementation would become another embodiment derived from the teachings of claims 4 and 6.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuong Phu whose telephone number is 571-272-3009. The examiner can normally be reached on M-F (8:00 AM - 4:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chieh Fan can be reached on 571-272-3042. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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12/28/07